IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.861 OF 1996.

Mallinath Shankarao Dhangay : Appellant.

versus

The State of Maharashtra & Anr : Respondent.

Mr.K.S.Patil i/by Mr.Pramod N. Joshi for the appellant.

Mr.Nitin Jamdar for Respondent No.2.

CORAM : D.G.DESHPANDE,J.

DATED : 27th January 2005.

ORAL ORDER

1. Heard Mr.Patil, advocate appearing for the appellant and, Mr.Jamdar, advocate appearing for Respondent No.2 - The Solapur Municipal Corporation. This appeal is filed by the original claimant against the order of dismissal of his Reference under Land Acquisition Reference for enhancement of compensation by the IInd Joint Civil Judge, Sr. Division, Solapur on 6th

February 1995.

2. The claimant was the owner of the Plot and two storeyed house on the plot of land in Solapur which is situated in market area. The total area of the plot was 13.40 sq.mtrs. Out of which 10.55 sq.mtrs was acquired by Respondent No.2 for road widening. Notification under Section 126 of the M.R.T.P. Act was issued on 19th May 1988 and the date of Award was 7th June 1990 and, therefore, he filed the Reference claiming Rs.2170/- per sq.mtr. as compensation. He relied upon three sale instances by filing necessary Index II which were exhibited during his evidence and also relied upon the evidence of expert who was examined by him.

3. However, the lower Court relying upon the judgment of the Supreme Court reported in **A.I.R. 1994 SC 2395 [Municipal Corporation of greater Bombay v. Central Bank of India and another]** held that when the lands are acquired for road widening, it is not market value that is to be given to as compensation but it is the loss suffered by the claimant. The lower Court, therefore, found that the compensation was

adequate and, therefore, the Reference was dismissed. Hence this appeal.

4. Counsel for the appellant contended that firstly the land was situated in a prime locality of Solapur and this fact was admitted in Award of the acquired property and the description is given as under :-

. The South-North road mentioned above is the most important Commercial road in Shukrawar Peth area of Solapur Town. The Petty Commercial activities viz. Hotels, Frame makers shops, shoe Depots, Flower shops, Kirana Shops, Utensils Shops etc. are located on road from Vijapur Ves to Manik Chowk. One cinema theatre known as "Ganesh Chitra Mandir" is situated on this road. Two Hospitals and Two to three Dispensaries are also located on this road. There are other shops and this portion of the road is popularly known as Bhande Galli meaning thereby shops dealing with utensils.

Secondly, the advocate for the appellant pointed out that acquisition was carving out the plot from 13.40 sq.mtr. to 10.55 leaving strip of

land behind for the claimant which was admittedly no use to the claimant. From the evidence he also pointed out that there was storeyed house, foundation of which was in stone, and the structure was Pakka with bricks and lime and the wood was used extensively in the house. It was teak wood. The advocate for the claimant relied upon three sale instances by producing necessary certified copies of Index II. He also contended that the property that was left out was purchased for Rs.5000/- per sq.mtr. Therefore, according to him, even if the market value is not to be awarded in such case, the claim made by him of Rs.2170/- per sq. mtr. is most adequate and proper. Reliance was also placed on the evidence of expert.

5. As against this Mr.Jamdar appearing for Municipal Corporation relied upon the judgment of the Supreme Court referred to above i.e. **A.I.R. 1994 SC 2395 [Municipal Corporation of greater Bombay v. Central Bank of India and another]** wherein Supreme Court has clearly laid down that "principle of determination of compensation payable for lands or buildings acquired under Section 298 or 299 of the Bombay Municipal

Corporation Act specified under sub-section (1) of Section 301 of the said Act requires that such compensation shall be confined only to the loss sustained or the expenses incurred, by the owner, as a consequence of acquisition of his building or land lying within the regular line of the public street." Even if it is accepted for the sake of arguments that the claimant has proved the sale deeds, he would not be entitled to any market value of the land. Value should be determined on the basis of loss suffered.

. Secondly, Mr.Jamdar contended that producing certified copies of Index II of three sale instances was not sufficient and proper and, the sale deeds in that regard should have been produced and, vendor or vendee should have been examined in Court.

. Thirdly, he contended that the witness i.e. expert examined by the claimant did not compare the sale instances available at the relevant time or all the relevant period. This admission goes to show that the expert has not given his opinion after taking into consideration the relevant aspects. He therefore contended

that the Court has, after considering this aspect, rightly dismissed the Reference and, no interference is required for.

6. Since the Supreme Court in the aforesaid judgment has laid down the principle of determination of compensation payable for acquired lands for road widening purposes, the same will have to be accepted and followed. The question remains is, whether the compensation awarded by the SLAO at Rs.800/- per sq.mtr. is just and proper even if it is accepted that the claimant has not claimed to market value and he has to be compensated to the loss suffered by him. In fact, if that category is applied, then loss sustained by the claimant on account of acquisition is well reflected in the sale of his remaining land by the claimant to the adjoining neighbour at Rs.5000/- per sq.mtr.

. Mr.Jamdar, however, in this regard, contended that because the adjoining neighbour was interested, therefore, he might have paid more price and, that cannot be taken as consideration.

. As against this, the advocate for the claimant contended that he has given due consideration to this particular aspect viz. need of adjoining owner and, therefore, he has not claimed compensation at Rs.5000/- per sq.mtr. whereas he has restricted his claim to Rs.2170/- per sq.mtr.

7. It is true that the claimant has not examined vendor or vendee of the three sale instances which are sought to be proved by producing certified copies of Index II. Further in his evidence the owner showed connection between the proved documents and their situation and location of the properties covered by those three sale instances. In the cross examination nothing was brought on record to nullify the part of that evidence. The advocate for the claimant therefore contended that the property covered by three sale instances is just near and in the same area and locality and, the compensation paid in each of the respective properties in those sale instances is more than Rs.2000/- per sq.mtr. Therefore, in this view of the matter, non-examination of vendor or vendee will not

affect the credibility of the matter. It would have been better that the claimant should have examined the vendors or vendees to prove this particular fact. But since on oath the claimant has stated that the property was adjoining to acquired property or in the vicinity of acquired property, then there is no reason to disbelieve his evidence.

. Thirdly, it is true that the expert (PW.2) or the witness for the claimant has admitted in his evidence that he had not verified any sale instance except the sale instance pertained to the remaining part of the building owned by claimant. However, his report is on record at Exhibit **19.** He has considered the aspect that the sale of remaining part of the building by the claimant was the sale in distress and, therefore, he has given his opinion that the value of the acquired land was Rs.2170/- per sq.mtr.

8. It is a matter of fact that by acquiring 10.55 sq.mtrs. out of 13.40 sq.mtrs. and that too from two storeyed building, the acquisition has caused substantial and huge loss to the

claimant. Therefore, if the loss suffered by the claimant is to be determined, then the lower court should have considered this aspect more seriously.

9. It is true that the purchaser of remaining land from the claimant was in need of and, therefore, he might have paid Rs.5000/- per sq.mtr. But it is equally true that the land remained after acquisition with the claimant was useless to the claimant and the claimant could have sold it for any price that was reasonable or even not according to the market rate. But in spite of this need of the claimant, the fact that the neighbour paid Rs.5000/- per sq.mtr. speaks about the value of the property.

10. In these circumstances, the order of the trial Court cannot be sustained. The claimant is entitled to enhancement and, in my opinion, considering the evidence adduced and category fixed Rs.1900/- per sq.mtr. would be proper compensation. I, therefore, pass the following order :-

:ORDER:

. The appeal is allowed. The impugned order is set aside.

. The claimant will be entitled to Rs.1900/- per sq.mtr including the amount of Rs.800/-per sq.mtr. granted to him by the authorities.

. The claimant will be entitled to solatium at 13% p.a. and interest at 9% p.a. as provided by law with costs of the appeal.

. Certified copy expedited.

[D.G.DESHPANDE]

27/01/2005 JUDGE.